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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,536	10/24/2003	Jeff Jelinek	87359.1940	6875
7590 10/03/2005 BAKER & HOSTETLER LLP Washington Square, Suite 1100 1050 Connecticut Avenue, N.W. WASHINGTON, DC 20036			EXAMINER PRICE, CARL D	
			ART UNIT 3749	PAPER NUMBER

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/691,536	Applicant(s) JELINEK, JEFF	
	Examiner CARL D. PRICE	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-11,13-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-11,13-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 07/15/2005 have been fully considered but they are not persuasive.

The Examiner has noted the following statement made by Applicant on page 6 of the response:

“Examiner rejected claims 1-3, 8-11 and 17-19 under 35 U.S.C. 102(b) as being anticipated by JP10-148307 (“Tezuka”). Applicant respectfully traverses these rejections.”

It must be noted however that the Office Action mailed on 05/05/2005 rejects claims under 35 U.S.C 103, not under 35 U.S.C. 102(b) as suggested by applicant.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that the prior art references relied on to reject the claims do not show or teach a “burner controller operably connected to the system controller wherein the system controller sends a signal to the burner controller to shut down the burner when the NO_x emissions in the exhaust conduit are at a first unacceptable level”. The Examiner disagrees. To the extent that the extent that the pulsations discussed in Bentz et al are indicative of or related to the concentration of NO_x (i.e. – the computer opens the FGR damper 77 just enough to reduce NO_x to the desired level” (see column 8, line 55 - column 6, line 11), Bentz et al teaches that a “computer”, which operates in response to computing the fraction of flue gas recirculated (FGR) by performing a mapping and storing function, “may shut down the boiler”.

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With regard to applicant's comments directed to the examiner's taking Official Notice, it is untenable to suggest that a person having ordinary skill in the art would be unaware, and consider unobvious, that:

- shut down burners when the unacceptable operating parameters are detected in order to prevent unsafe or damaging burner operation (see for example, **US005002484 (Lofton et al)** and **JP 03-194314**;
- use solenoid valves as fluid control means (see (77) in **US005511971A (Benz et al)**;
- use a microprocessor with a memory and stored operating values as a system controller **US005511971A (Benz et al)**;
- system control means arranged to activate an alarm when system parameters are at a unacceptable levels to notify maintenance personnel.

The prior art references of US005002484 (LOFTON et al) (of record) US005539638A KEELER et al (newly cited) and US005984663A (JOYCE)(newly cited) are now relied on in the rejection of the claims to support the examiners position.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **10, 11, 15, 16, 17 and 18** are rejected under 35 U.S.C. 102(b) as being anticipated by **US005511971A (Benz et al)**.

US005511971A (Benz et al) shows and discloses a system for a hydrocarbon fired burner comprising:

- an exhaust conduit (54) in fluid communication with a burner (51);
- a recirculation conduit (59) configured to provide at least at times fluid communication between the exhaust conduit and burner inlet;
- an adjustable valve (77) configured to selectively permit the recirculation conduit to provide fluid communication between the exhaust conduit and the burner inlet;
- a NOx sensor located in the exhaust conduit (54), and
- a system controller (58) connected to the NOx sensor and configured to monitor an amount of NOx emissions in the exhaust conduit,
- the system controller is also connected to the valve to adjust the valve
- a digital microprocessor, or computer, with a memory and stored operating values as a system controller (i.e. – “The computer then stores these (two separate sets of) values digitally” (see column 6, line 1).

US005511971A (Benz et al) shows and discloses (See column 5, line 56 – column 6, line11) a method for a hydrocarbon fired burner including continuously measuring NOx, sending an NOx signal to a computer controller (58) that determines a command signal to control the solenoid operated recirculation damper (77).

US005511971A (Benz et al) discloses that a “computer”, which operates in response to computing the fraction of flue gas recirculated (FGR) by performing a mapping and storing function, “may shut down the boiler” when the unacceptable operating parameters are detected.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-11, 13-19 and 20: Rejected under 35 U.S.C. 103(a)

Claims 1-3, 5-11, 13-19 and 20 are rejected under 35 U.S.C. 103(a) as being obvious over US005511971A (Benz et al) in view of US005002484 (LOFTON et al) (of record) and US005539638A KEELER et al (newly cited).

US005511971A (Benz et al) shows and discloses a system for a hydrocarbon fired burner comprising:

- an exhaust conduit (54) in fluid communication with a burner (51);
- a recirculation conduit (59) configured to provide at least at times fluid communication between the exhaust conduit and burner inlet;
- an adjustable valve (77) configured to selectively permit the recirculation conduit to provide fluid communication between the exhaust conduit and the burner inlet;
- a NOx sensor located in the exhaust conduit (54), and
- a system controller (58) connected to the NOx sensor and configured to monitor an amount of NOx emissions in the exhaust conduit,
- the system controller is also connected to the valve to adjust the valve
- a digital microprocessor, or computer, with a memory and stored operating values as a system controller (i.e. – “The computer then stores these (two separate sets of) values digitally” (see column 6, line 1).

US005511971A (Benz et al) shows and discloses (See column 5, line 56 – column 6, line 11) a method for a hydrocarbon fired burner including continuously measuring NOx, sending

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an NOx signal to a computer controller (58) that determines a command signal to control the solenoid operated recirculation damper (77).

US005511971A (Benz et al) discloses that a “computer”, which operates in response to computing the fraction of flue gas recirculated (FGR) by performing a mapping and storing function, “may shut down the boiler” when the unacceptable operating parameters are detected.

However, **US005511971A (Benz et al)** does not disclose:

- the NOx sensor is located upstream from the recirculation conduit;
- the controller operates to send a signal to the burner controller to “shut down”, notify or alarm maintenance personal when the NOx emissions in the exhaust conduit are at a first, or second, predetermined level.

US005002484 (LOFTON et al) teaches, from applicant’s the same flue gas recirculation field off endeavor, automatically shutting down a furnace unit when a comparison of monitored values demonstrates a low oxygen concentration indicative of substantial incomplete combustion (and therefore indicative of an undesirable level of NOx).

US005539638A KEELER et al teaches, from applicant’s same combustion emissions control field of endeavor, shutting down combustion operation rather than face high penalties of out-of-compliance operation (see column 1, line 56 – column 2, line 14).

In regard to claim 2, since the operation of a given burner system would depend on numerous design concerns such as the fuel type combusted, the overall size, shape and heat output of the combustor, etc., to place the NOx sensor is located upstream from the recirculation conduit can be viewed as nothing more than a mere matter of choice in design absent the showing of any new or unexpected results produce therefrom over the prior art reference of Bentz et al.

In regard to claims 1-3, 5-11, 13-19 and 20, for the purpose of preventing unsafe or damaging burner operation, to avoid high penalties and to provide suitable means for operating

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the control system, it would have been obvious to a person having ordinary skill in the art to provide the various system components set forth in the claims.

In regard to claims **5, 8, 13, 14, 17 and 20**, whether the a predetermined level of NO_x is at or above a “first” or “second” level to initiate either an alarm or valve adjustment can be viewed as nothing more than merely a matter of choice in design and/or an obvious engineering design expedient absent the showing of any new of unexpected results produced therefrom.

Conclusion

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is **(571) 272-4880**. The examiner can normally be reached on Monday through Friday between **6:30am-3:00pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Monica S. Carter can be reached on **(571) 272-4475**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC)** at **866-217-9197 (toll-free)**.



CARL D. PRICE

Primary Examiner

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